evidence because his demeanour was unimpressive. I think it was a poor way of bolstering up a weak case against him. Most important of all, the judgment of the President showed that what he termed inferences were nothing of the sort, because he drew his inferences from no proven facts. To say that the appellant's agreement to the increase, which was nothing more than an acquiescence in a demand, was sufficient to justify an inference of "notice of increase of rent" having been given was to beg the question. To say further that "chettiars as a general rule are so very careful with reference to money matters" that it should be inferred that they must have complied with the provisions of section 6(2), is to ascribe to every chettiar a degree of legal acumen which common experience does not acknowledge to be a truism. Had the President considered the evidence of the appellant with any care, he should have realised, from the known facts, that the appellant's admission of a demand for increase of rent by the RM.P. rent collector was the most significant admission in his favour because a rent collector as such has no authority to give any notice determining a tenancy and because landlords whose place of business was in Malacca must necessarily send any such notice in writing to a tenant of premises in Kuala Pilah. That would give rise again to a reasonable and probable inference that if chettiars are naturally prudent persons, punctiliously observing the law, they must have at the same time realised that the notice under section 6(2) being necessary for a lawful increase of rent would have to be carefully preserved and therefore have been available for production. Non-production of the notice should then lead to an adverse inference under section 114 of the Evidence Ordinance.

Fourthly, it is clear that, when the rent was raised in March, 1948, the permissible increase under the First Schedule to the 1948 Ordinance was only 10%, because no provision was made for "premises used wholly or partly for purposes other than human habitation." An increase of rent beyond the lawful limits by itself affords the clearest intrinsic evidence that the RM.P. firm as the then landlords either did not know or did not care to observe the provisions of section 6(2). When the Control of Rent (Amendment) Ordinance, 1949, came into force on 9th December, 1949, it legitimised the increase of rent of the premises in question in this case to $50 but there was absolutely no evidence that any notice under section 6(2) was then given and it is obvious that any notice served previously for an unauthorised increase of rent could not possibly have been put to use more than eighteen months later. In the result, the respondent had been overpaid the sum of $10 a month from February, 1951 to September, 1959, a total of $1,040.

There being no arrears of rent lawfully due under section 12(1)(a) of the Ordinance currently in force when notice to quit was given, the respondent's claim to possession must fail.

For the above reasons I allow the appeal and dismiss the cross-appeal. The order of the President is wholly set aside. The claim must be dismissed and judgment given for the appellant on the counterclaim for the sum of $1,040 being rent overpaid to the respondent. Any double rent paid has to be refunded. The appellant will have the costs here to be taxed and costs in the Court below according to scale.

Appeal allowed.

Solicitors: *George & Khoo; Sault, Keith Sellar & Co.*

NG WAN SIEW v. TEOH SIN

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) December 7, 1962]

[K.L. — F.M. Civil Appeal No. 46 of 1962]

Administration of Estate — Question whether appellant a natural or adopted son — Parol and documentary evidence — Weight to be attached — Admission into evidence of statements and documents — When to be contested — Whether proceedings should be commenced by Writ or Originating Summons.

Practice and Procedure — Writ or Originating Summons — When to commence by.

The appellant claimed that certain documents and oral evidence which the trial judge had admitted into the record in deciding the question whether he was the natural or the adopted son of an intestate should not have been admitted.

Held: the objections should have been raised at the trial and not on appeal.

Per curiam: When it is known that there is going to be a conflict of testimony and a necessity for taking parol evidence the proceedings should be commenced by Writ.

COURT OF APPEAL.

W. S. Chen for the appellant.

S. D. K. Peddie for the respondent.

Thomson C.J. (delivering oral judgment): This appellant claims to be the natural son of a man called Ng Seng Kee who died intestate on 24th May, 1944, leaving two widows and the appellant and as such entitled to participate in the succession to his father's estate.

His mother who is the administratrix of the estate and the respondent to this appeal claims that he is not a natural son but an adopted son.

Mr. Justice Suffian heard the case and came to the conclusion that the appellant was an adopted son. Against that decision the appellant has now appealed.

Apart from documents, to which I shall come in a moment, there was a great deal of parol evidence which was virtually uncontradicted by other parol evidence to the effect that the appellant was an adopted son. In the first place there was the evidence of his alleged mother, the respondent, who after all is the person best

qualified to know as to whether he was a natural son or not and there was the evidence of a woman, Lim Kwai, who said she had acted as go-between in arranging for the adoption of the appellant. According to her he was the natural son of two people called Lee Hai and Ng Ho Nio. Such was the parol evidence.

In addition there was a quantity of documentary evidence some of which supported the appellant, some of which (the admissibility of which has been challenged) was against him.

There was a birth certificate showing him to be a natural son. There was a travel document showing him to be a natural son. But of course it is well known that it is a common practice among the Chinese community to treat adopted sons in every way as natural sons and the fact that the appellant was so treated as regards registration of his birth and as regards travel documents does not take the case very far.

Then there was a so-called document of adoption that the respondent said was found among some papers of her deceased mother. That purports to be a document executed by the natural father and mother of the appellant making him over as an adopted child to the respondent and rather curiously on the face of it it bears the date of the 8th day of the 8th moon of the 28th year of the Chinese Republic (20th September, 1939) which curiously is the first birthday (by Chinese reckoning) of the child according to the document itself and which is the same date as appears on the birth certificate which has been extracted from the Register of Births and Deaths, Pahang. That document bears the signature as attesting witness of the woman, Lim Kwai who was called and swore to it and who also swore of her own recollection of the circumstances of the adoption. This document, it has been argued, was wrongfully admitted.

Now, in the first place if this point was to be taken at all it should have been taken at the trial. It is too late to take it now. And in the second place it is a bad point because the document is clearly admissible if only to corroborate the oral evidence of the woman who signed as a witness, that is Lim Kwai. At the very lowest it is admissible by reason of sections 159 and 160 of the Evidence Ordinance to refresh her memory.

Again it has been said that certain bits and pieces of parol evidence should not have been admitted as they were hearsay. Again the point was not taken at the trial and in my view not only is it too late to take it now but it is a bad point for the evidence was not hearsay.

Finally it is said that the Judge looked at the respondent's petition for letters of administration which omitted all reference to the appellant as one of the next-of-kin. It is said that he should not have done so because that document was not produced in evidence by either party. Again, the point was not taken at the trial although at the trial the Judge made it very clear he was going to look at that document. Again it is too late to take the point now. I would, however, observe that my own view is that the point is of little importance because the document in question is of very, very little evidential value and in my own consideration of the case I would be quite prepared to disregard it.

Nevertheless disregarding that document, looking at the parol evidence as a whole and looking at the remainder of the documentary evidence I am satisfied that this Court would not be justified in interfering with the findings of Mr. Justice Suffian.

I would accordingly dismiss the appeal and while I would not disturb the order as to costs in the Court below which was that all costs should come out of the estate I am of the opinion the appellant should pay the costs of this appeal.

Before departing from the case I should make one observation. I would have made it earlier had it not been of academic interest as far as this case is concerned by reason of the order as to costs made in the Court below. It is to the effect that these proceedings should have been started by writ and not by originating summons. Theoretically they could have been started either by writ or by originating summons but it has been said again and again that when it is known there is going to be conflict of testimony and a necessity for taking parol evidence the proceedings should be commenced by writ and a plaintiff if successful may be deprived of any additional costs caused by his having commenced proceedings by way of originating summons.

Hill and **Barakbah JJ.A.** concurred.

Appeal dismissed.

Solicitors: *W. S. Chen; Bannon & Bailey.*

FOONG YIT YOON v. YAP TIAM & ANOR.

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) January 14, 1963]

[K.L. — F.M. Civil Appeal No. 41 of 1962]

Negligence — Contributory negligence — Collision between two lorries travelling at night in opposite directions — No reliable witness of accident — Evidence of position of wreckage, of the dead and injured and final position of vehicles — Doctrine of res ipsa loquitur.

The evidence in this case showed that two lorries came into collision on a broad road in conditions of perfect visibility. There was no evidence of any other vehicle having been on the road at any material time.

Held: in the absence of anything else, the balance of probability is that the drivers of both vehicles were to blame and that it is impossible to say in what proportion the blame should be allocated between them. Accordingly, the only course is to hold them blameworthy in equal proportions.

Cases referred to:—

(1) *Baker* v. *Market Harborough Industrial Co-operative Society Ltd.* [1953] 1 W.L.R. 1472.
(2) *Bray* v. *Palmer* [1953] 1 W.L.R. 1455.
(3) *France* v. *Parkinson* [1954] 1 All E.R. 739.
(4) *Ong Yam Chong & Anor.* v. *Chan Wah* [1962] M.L.J. 184, 187.